

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the detention order dated 29.12.1997 passed by the Police Commissioner, Rajkot, under Section 3(2) of the Prevention of Anti-social Activity Act, is under challenge. The prayer is for setting aside the impugned order of detention and for releasing the petitioner forthwith.

2. This writ petitioner has a peculiar history and it seems that neither the petitioner nor his Counsel is interested in prosecuting this writ petition. It was admitted on 1.10.1998. It was taken up for final hearing on 25.11.1998. This is the oldest writ petition according to actual date of detention on the file of this Court. On 25.11.1998 also none appeared for the petitioner. It was adjourned to 3.12.1998 so that the interest of the petitioner may not be prejudiced. Same was repeated on 3.12.1998 and no counsel appeared to argue this writ petition despite the list was revised. It was then adjourned to 10.12.1998. The same history repeated on 10.12.1998 and the case was adjourned for today for final hearing. Again, despite revision of list twice, none has appeared on behalf of the petitioner. It is 1.40 p.m. As such the grounds taken in the writ petition have been considered and examined with the assistance of learned A.G.P.

3. It appears from Para : 5 of the writ petition that the petitioner committed six offences punishable under Chapters : XVI and XVII of the Indian Penal Code. The details and CR Numbers are given in this para. Significantly all these offences are under Sections 454, 457, 380 and 114 I.P.Code. Thus, on the basis of this averment contained in the writ petition and further in view of the grounds of detention repetition of commission of offences under Chapter : XVI and XVII of the I.P.Code is prima facie established. Consequently the petitioner could be branded as "dangerous person" within the meaning of Section 2(c) of the PASA.

4. The order of detention has been challenged on various grounds in the writ petition, but material grounds are as follows :

5. The first ground is contained in Para : 6 where

it is averred that there is no material to show that the activities of the petitioner were prejudicial for maintenance of public order. This ground has no substance. The statements of three confidential witnesses fully furnished material to conclude that the activities of the petitioner were prejudicial for maintenance of public order. The three witnesses were not only beaten but on the point of knife threat was extended to them so also to the members of public who collected at the spot to save the witnesses. Even tempo of the life of the community was disturbed. Hence, the prejudicial activities narrated by the three witnesses were certainly prejudicial for maintenance of public order. This ground has, therefore, no substance.

6. The next ground is contained in Para : 7 of the writ petition that copies of material documents relied upon by the detaining Authority were not supplied to the detenu. This ground is quite vague. It is not disclosed what were the material documents, according to the petitioner, which were referred or relied upon by the detaining authority and whose copies were not supplied to the petitioner. As such on such vague ground the detention order cannot be quashed.

7. The next ground is contained in Para : 8 of the petition that the detention order was passed without any material on record. This is patently incorrect. The material relied upon by the detaining Authority has been fully disclosed in the grounds of detention and it cannot be held that the detention order was passed in routine manner without application of mind. All the material was considered by the detaining Authority. Hence, the impugned order does not suffer from the vice of non-application of mind.

8. The next ground contained in Para : 12 of the writ petition has been discussed above while discussing the question of breach of public order. The statements of three witnesses certainly indicated that the petitioner created situation prejudicial for maintenance of public order on these three occasions. Hence, this ground has also no substance.

9. Another ground is contained in Para : 14 of the writ petition that the privilege claimed by the detaining Authority in not disclosing the names and addresses of the three witnesses is illegal and improper. In the grounds of detention the detaining Authority has mentioned that on account of fear in the mind of the witnesses and keeping in view their request that their

names and addressed be not disclosed, the detaining Authority claimed privilege under Section 9(2) of the PASA. This claim of privilege was certainly in public interest inasmuch as life and security of the three witnesses was also to be kept in mind and was to be safe-guarded. Thus, there is no merit in the plea that the claim of privilege was not in public interest.

10. Another ground taken is that the representation dated 29.12.1998 made to the Home Secretary was not considered. Initially in this para the date and month of representation was not given. The year of making representation was typed as "1998". Subsequently the date and month was given in this para in hand-writing as "29.12.1998". This is apparently incorrect date and year because "29.12.1998" has not yet arrived. The detention order was passed on 29.12.1997. As such no representation could be made on 29.12.1998. Learned A.G.P. from the record informs that no representation of this date or of any other date was received from the petitioner. If the petitioner did not make any representation the State Government cannot be blamed for not considering the representation which was never made by the detenu.

11. Thus, none of the grounds taken in the writ petition are enough for rendering the detention order illegal.

12. Learned A.G.P. further informs that on 23.12.1998 the state Government has passed order that the petitioner be released on 28.12.1998. It is obviously in view of the fact that on this date the petitioner will be completing maximum period of detention under PASA.

13. For the reasons aforesaid, I do not find any substance in this writ petition which is hereby dismissed.

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(D. C. Srivastava, J.)

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